

REMARKS

Claims 1, 3-4, 9-13, 15-16, 19, 21, are pending. Claims 14, 17, 18, 20, 22, 23, 28-46, 48-109 are withdrawn. Claims 2, 5-8, 24-27 and 47 have been canceled.

The Office Action of Oct. 17, 2007 indicated that the amendment of August 9, 2007 was non-responsive because it did not recognize the May 16, 2007 amendments as entered claims.

On Nov. 9, 2007, the undersigned conducted a telephone interview with the Examiner in which the Examiner explained that the May 16, 2007 amendment claims (which were entered) should be recognized as entered claims from which the current amendments are made. The undersigned thanks the Examiner for his helpful cooperation.

Support for the amendments to claim 1 is found at page 7, lines 5-9 and as-filed claims 2, 5-8 and 12 of the as-filed specification, and FIGS. 1a-1d, as follows:

wherein the means for selectively adjusting a relative position is disposed upon the inner surfaces and comprises an elongated channel and an elongated projection adapted to mate with the elongated channel (*as-filed claim 2*),

wherein the elongated projection comprises a threaded throughhole running in the direction of the elongation (*as-filed claims 5-6*),

wherein the means for selectively adjusting a relative position further comprises a captured screw disposed within the throughhole, the screw having an elongated shaft and a threadform thereon, the threadform being complimentary to the threaded throughhole (*as-filed claim 7*),

wherein the channel comprises means for capturing the screw (*as-filed claim 8*),

wherein the screw comprises a longitudinal shaft having a thread thereon, a blunt distal tip, and a proximal head having a slot, the elongated shaft comprising a recess adapted for reception of a locking clip (*page 7, lines 5-9 and as-filed claim 12*), wherein the elongated channel further comprises an anterior recess and a posterior recess defined by necks in the elongated channel (*page 7, lines 5-9*), wherein the blunt distal tip and the proximal head of the screw are respectively seated in the anterior recess and the posterior recess to render the screw captured and spatially fixed save rotation (*page 7, lines 5-9*).

The drawings stand objected to under 37 CFR 1.83 as failing to show each feature of the claims.

Regarding claim 1, the Examiner takes the position that “an inner surface having a first articulation surface” does not correspond with the Figures, as articulation surface is shown on an outer surface.

Applicants submit that since the as-amended claim endplate is part of an intervertebral motion disc having a configuration corresponding to the general type shown in FIG. 13. The disc includes an intermediate core. Since the first articulation surface 24 is on a surface 23 that faces the core, then surface 23 should be considered an inner surface (relative to the core). Likewise, the outer portions of the plate should touch the vertebral body. Thus, the outer plate should comprise an outer surface adapted for fixation to a first vertebral body, as Applicant has recited.

Therefore, the objection should be withdrawn.

The Examiner further concludes that the measuring means (claim 24), the limitation “adapted to be actuated telemetrically” (claim 25), the motor (claim 26) and the hydraulic means (Claim 27) should be shown in the figures.

Applicant submits that since these claims 24-27 have been canceled, the objection should be withdrawn.

Claims 9, 10, 13, 15 and 24 stand objected to for various informalities. Claims 9 and 10 should replace “means” with –means for capturing--; claims 13 and 15

should replace "claim 5" with "claim 7"; and claim 24 should replace "means is adapted" with --means adapted--.

Applicants have made the proposed changes and thanks the Examiner for the helpful suggestions. Claim 24 has been canceled.

Claims 1-10, 12,13,15,16,19,24,25,and 47 stand rejected under 35 USC 112, second paragraph as indefinite.

Regarding claims 1 and 47, the Examiner takes the position that "an inner surface having a first articulation surface" does not correspond with the Figures, as articulation surface is shown on an outer surface.

Applicants submit that since the as-amended claim endplate is part of an intervertebral motion disc having a configuration corresponding to the general type shown in FIG. 13. The disc includes an intermediate core. Since the first articulation surface 24 is on a surface 23 that faces the core, then surface 23 should be considered an inner surface (relative to the core). Likewise, the outer portions of the plate should touch the vertebral body. Thus, the outer plate should comprise an outer surface adapted for fixation to a first vertebral body, as Applicant has recited. Therefore, the objection should be withdrawn.

Regarding claim 2, the elongated recess lacks antecedent basis and is indefinite with respect to "elongated channel".

Applicants have replaced "elongated recess" with --elongated channel-- in claim 2.

Regarding claim 7, "the threaded throughhole" has no antecedent basis.

Applicants have canceled claim 7.

Regarding claim 24, "the captured screw" has no antecedent basis.

Claim 24 has been canceled.

Claims 1-10, 12, 13, 15, 16, 19 24,25,47 stand provisionally rejected under the judicially-created doctrine of obviousness-type double patenting as being unpatentable over claims 1,12,13,15,18-20,23-26,37,39,40,46-48 of copending application No. 11/015,927.

Applicants will file a terminal disclaimer when and if needed.

Claims 1-10, 12,13,15,16,19,24,25,and 47 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,045,579 ("Hochshuler").

Claim 1 has been amended to require a captured screw, wherein the blunt distal tip and the proximal head of the screw are respectively seated in the anterior recess and the posterior recess of the outer plate to render the screw captured and spatially fixed with rotation.

In contrast, Hochshuler does not have a captured screw containing the above features. Rather, Hochshuler's screw moves axially (compare Figures 12 versus 13, and Figures 14 versus 15).

Claims 1-5, 24, 25,and 47 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,190,414 ("Young").

Claim 1 has been amended to contain all the requirements of claim 12. Since claim 12 was not rejected in view of Young, this rejection should be withdrawn.

Claims 1-10,13,15,16,19, 24, 25,and 47 stand rejected under 35 USC 102 as being anticipated by US Patent No. 6,454,806 ("Cohen").

Claim 1 has been amended to contain all the requirements of claim 12. Since claim 12 was not rejected in view of Cohen, this rejection should be withdrawn.

The July 11, 2007 Office Action found the previous response to be non-responsive because :

- a) newly added limitations correspond to a non-elected species;
- b) the amended claim amounted to a hybrid invention from two different embodiments,
- c) there was inadequate support identified for the amendments.

The current response cures the deficiencies recited above because claim 1 amendments derive from the elected species and only the elected species, and adequate support is identified from elected dependent as-filed claims (claims 2,5-8,12) and from the specification related to an elected Figure (FIG.1).

In addition, please provide any additional extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,



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